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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,996	08/01/2001	Nareak Douk	P563 CIP 2	9126
28390	7590	06/15/2004	EXAMINER	
MEDTRONIC VASCULAR, INC. IP LEGAL DEPARTMENT 3576 UNOCAL PLACE SANTA ROSA, CA 95403			NGUYEN, VI X	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 06/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/922,996	DOUK ET AL. 
Examiner	Art Unit	
Victor X Nguyen	3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 29 March 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-6,8-13,19-22,24-27 and 31-36 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-6,8-13,19-22,24-27 and 31-36 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 8-13, 19-22, 24-27 and 31-36 are rejected under 35 U.S.C. 102 (b) as being anticipated by Daniel et al (6,001,118).

Daniel et al disclose in figs 19, 23b, a device (280) for capturing embolic material, including: a guide-wire (284), a capture element (290) disposed about the guide-wire. Item 288 is considered a latch defined as a device to get hold of or obtain another item that is used to get a hold of the guide-wire. The statement of intended use and other functional statements have been carefully considered but are deemed not to impose any structural limitations on the claims distinguishable over Daniel et al which is capable of being used as claimed if one desires to do so.

Regarding claims 2-5, Daniel et al disclose the capture element (290) is fixed to the guide-wire. The device further comprises a stop element (288) disposed on the guide-wire. At-least one latch (288) is positioned between the distal ends of the capture element. The device further comprises an inversion stop (396, fig. 23b) fixed to the guide-wire.

Regarding claims 6-9 and 34-36, Daniel et al disclose the device further comprises a hollow, deployment rod (282) disposed about the guide-wire. The deployment rod pushes the capture element along the guide-wire and over the at-least one latch (288) that transforms the

capture element from the closed configuration to the deployed configuration. The deployment rod comprises a catheter (figs 19, 20 a-b).

Regarding claims 10-13 and 31, Daniel et al disclose the capture element comprises a filter (290). The capture element comprises a tubular braid of filaments (312). The filaments comprise shape-memory metal wire which is nitinol (see col. 12, lines 7-59).

Regarding claims 19-22, Daniel et al disclose the capture element comprises a support structure (312). The support structure comprises a tubular braid of filaments. The support structure comprises a tube that has been slotted to form struts and the tube comprises nitinol (see fig. 19, col. 11, lines 4-14 and col. 12, lines 6-15).

Regarding claims 24-27 and 32-33, Daniel et al disclose the capture element comprises a filter that captures the embolic material. The capture element is made of polyurethane material (see col. 11, lines 4-49). The device further has at least one latch (288) that is suitable for engagement with the capture element and is fixed to the guide-wire (284).

Response to Arguments

2. Applicant's arguments filed 3/29/2004 have been fully considered but they are not persuasive. With respect to claim 1, the examiner disagrees with applicant's remarks that item 288 of Daniel et al is not a latch. As the examiner has pointed out above, Daniel et al disclose in figs 19, 23b, a device (280) for capturing embolic material, including: a guide-wire (284), a capture element (290) disposed about the guide-wire. Item 288 is considered a latch defined as a device to get hold of or obtain another item that is used to get a hold of the guide-wire. The statement of intended use and other functional statements have been carefully considered but are deemed not to impose any structural limitations on the claims distinguishable over Daniel et al

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which is capable of being used as claimed if one desires to do so. Therefore, at least claim 1 of the invention is not defined over the Daniel et al'118 reference.

Conclusion

3. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X Nguyen whose telephone number is (703) 305-4898. The examiner can normally be reached on M-F (8-4.30 P.M.).

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Victor X Nguyen
Examiner
Art Unit 3731

Vn *VW*
June 9, 2004



JULIAN W. WOO
PRIMARY EXAMINER